introduced by the appellant at the level of the administrative hearing before the Interstate Commerce Commission dictates the conclusion that the broad grant of authority to the appellee applicant is not supported by the substantial evidence required.

While it is true as argued by the United States of America and the Interstate Commerce Commission in their motion to affirm herein that the test of "bona fide operation" does not necessarily restrict future operations to the precise points or areas already served, the case law authority cited by all parties dictates that there must be some evidence of the existence of a reasonably defined area or territory. Such evidence was not introduced in this case.

Appellant submits that there is no substantial evidence to support the Commission's conclusion that the applicant had established a right to the broad area-wide authority granted.

Contrary to the appellee's contention, neither the *Shaw* decision nor any other District Court decisions cited rejected what appellee chooses to call the Commission's "tabulator" approach in disposing of "grandfather" rights applications. On the contrary, every decision under the 1958 act that we have seen other than the instant Albany case has used the so-called "tabulator" approach. Obviously, the instant

decision could not withstand such critical analysis. To establish and prove the wisdom of the necessity to consider the evidence of point-to-point experience in these matters is the present case.

Inasmuch as on movements from Oregon to California the only origin served both before and after the "grandfather" date was Albany and the only other origins served prior to the "grandfather" date but not since were Portland and Woodburn, there is no justification in the record for granting applicant authority from all points in western Oregon to all points in California. Similarly, where the only Oregon origins served on shipments to Washington other than two shipments out of Corvallis prior to the "grandfather" date were shipments from Albany, the applicant was clearly not entitled to authority from all points in Oregon west of U. S. Highway 97 to all points in Washington west of U. S. Highway 97.

We submit that not even the most liberal construction of the "grandfather" clause can justify the broad grant of authority to Albany Food Products under the facts of this case, and clearly the Commission Order dated May 6, 1965, is not supported by substantial evidence.

We do not contend that the Commission must restrict future operations to the precise points already served, but we do suggest there must be substantial

parity between prior and future operations. That substantial parity rule is clearly violated in this case.

CONCLUSION

For the reasons stated, appellants request that the court deny the motions to affirm and no probable jurisdiction of this appeal and probable jurisdiction of this appeal be noted; or, in the alternative that the District Court be summarily reversed and this case remanded to the Commission for reconsideration inasmuch as the Commission's error is plain and can be rectified by reconsideration by the Commission.

Respectfully submitted,

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